

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK KEVIN MISHALL,

Defendant-Appellant.

UNPUBLISHED

October 17, 2006

No. 261511

Kalamazoo Circuit Court

LC No. 03-000897-FC

Before: Sawyer, P.J., and Wilder and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of premeditated first-degree murder, MCL 750.316, armed robbery, MCL 750.529, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to life in prison without parole for the murder conviction, life in prison for the armed robbery conviction, and two years' imprisonment for each of the felony-firearm convictions. We affirm.

Defendant argues that there was insufficient evidence to warrant his convictions. We review sufficiency of the evidence claims in criminal cases de novo, determining whether the evidence, viewed in the light most favorable to the prosecution, warrants a rational trier of fact in finding that all the elements of the charged crime have been met beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). Viewed in this light, the evidence presented at trial was sufficient to sustain defendant's convictions.

At the time of the victim's death, she and defendant were employed by the same chain of stores and were engaged to be married. Several weeks before the murder, defendant told one of the store's regular customers that he suspected she was having an affair. He said on two occasions, "If I catch her, I'm going to kill her." In the same time frame, defendant told the store's night manager that he had a gun, could use it, and could hide it in the store in case of a robbery. After the murder, defendant admitted that he threatened to kill the victim for having an affair. Defendant also admitted being upset that the victim received a managerial promotion instead of him.

The victim, responsible for opening the Stadium Drive store in Kalamazoo on the morning of her murder, deactivated the store's alarm at 6:25 a.m. Evidence showed that no one was in the store before the alarm was disarmed. Although the store regularly opened at 7:00 a.m., customers found the building unusually dark and locked at that time, indicating that the

victim never opened the store. Later, police officers discovered the victim's body lying face down in the rear of the store. She suffered multiple fatal gunshot wounds. Some of the shots were fired at close range, and at least one shot was fired while she was lying on the ground. There was no evidence of a battle or defense wounds on her body. Several items, and over \$2,000, taken from a locked safe and cash box, were missing from the premises. The store's owner testified that defendant was familiar with the money handling procedures and knew how to access the safe.

Defendant reported driving the victim to the store on the morning of the murder, parking his car parallel to the building, and assisting the victim inside the store before returning immediately to his house. He testified that it took seven minutes to drive from the store to his house, and that he arrived back at his house before 7:00 a.m. A friend of defendant's, however, testified that defendant was not at home at 7:00 a.m. Additionally, a witness reported seeing a car similar to defendant's car parked parallel to the store four or five minutes before 7:00 a.m.

Immediately after the murder, and during the years following, defendant reported contradictory information about his presence in front of the store, the discovery of the victim's body, his relationship with the victim, her alleged affairs, and his possession of a gun. Although several witnesses testified that defendant never owned a gun, and that he had a fear of guns, additional witnesses reported seeing him with a gun, or reported that he claimed to have one. One witness testified that, on the day of the victim's funeral, defendant actually asked him to dispose of a gun.

Several witnesses testified to conversations with defendant regarding his role in the murder. Defendant's girlfriend asked him twice whether he killed the victim, and he responded with violence. The witness testified, "He had his hand against my neck up against the door choking me telling me he should do to me what he did to" the victim. Additionally, defendant's cellmate testified that defendant said that he could not be arrested for killing his girlfriend. Defendant continued, "they couldn't even prove what I done back then."

On appeal, defendant specifically argues that the circumstantial evidence presented at trial is insufficient to prove his identity as the robber and killer. Defendant acknowledges, however, that circumstantial evidence, and reasonable inferences drawn from it, may be sufficient to prove the elements of a crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). We find that although there was no direct evidence implicating defendant, there was sufficient circumstantial evidence to enable a rational trier of fact to find him guilty of the instant crimes.

To establish first-degree murder under MCL 750.316, the prosecution must show that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. Premeditation and deliberation can be inferred from the circumstances surrounding the victim's death. *People v Saunders*, 189 Mich App 494, 495-496; 473 NW2d 755 (1991). In addition to the victim's manner of death, premeditation may be established through evidence of: 1) the parties' prior relationship; 2) defendant's prior actions; 3) the circumstances of the killing; and 4) defendant's actions after the killing. *People v Schollaert*, 194 Mich App 158, 170; 486 NW2d 312 (1992). Here, the victim's manner of death indicates that her murder was intentional, premeditated, and deliberate. Specifically, she suffered multiple, fatal gunshot wounds at close range, she was shot at least once while lying on the ground, her body remained in the same place

after the shooting, and there were no wounds suggesting that a fight or struggle occurred. See *People v Bowman*, 254 Mich App 142, 151-152; 656 NW2d 835 (2002) (stating that evidence of the victim's manner of death may be used to establish premeditation). Moreover, before her death, defendant was angry with the victim because of a promotion, suspected her to be unfaithful, and threatened to kill her. These facts are also relevant to the question of intent, motive, and premeditation. See *People v Fisher*, 449 Mich 441, 452-453; 537 NW2d 577 (1995) (holding that marital discord may be motive for murder, or may serve as circumstantial evidence of premeditation and deliberation; evidence of prior threats may be relevant to intent and motive).

Not only did the evidence establish premeditation, it established defendant's identity as the perpetrator of the crimes. Defendant admitted to being alone with the victim at the scene of the crime the morning of the murder. Based on the sequence of events that morning, a reasonable inference could be drawn that defendant was in the store at the time the murder took place. The store did not open on schedule at 7:00 a.m., and defendant was inside the store before that time. He was with the victim. His car was outside four or five minutes before 7:00 a.m., and he lied about being home at 7:00 a.m. Moreover, according to the store's security company, no one was inside the building before the victim and defendant entered at 6:25 a.m., and defendant testified that the victim would not have granted an unidentified person access to the store before it opened. Although mere presence at the scene of the crime, at the time the crime occurred, is insufficient to establish commission of the crime, evidence of opportunity and presence at the crime scene may contribute to a finding of guilt. *People v Barrera*, 451 Mich 261, 295; 547 NW2d 280 (1996); *Bowman*, *supra* at 151.

On the day of the victim's funeral, defendant asked a friend to dispose of his gun. Although mere possession of a gun does not constitute substantive evidence of guilt, the fact that defendant attempted to dispose of a gun, within days of the murder, supported a reasonable inference that defendant possessed the murder weapon and did not want it to be recovered. See *People v Casper*, 25 Mich App 1, 7; 180 NW2d 906 (1970) (holding that attempting to dispose of the murder weapon contributes to a finding of guilt).

After the murder, defendant made incriminating statements to several witnesses. According to a detective's testimony, defendant referred to the victim's being shot, although no one informed defendant of the manner of death before defendant made his comment. There was no credible evidence to support that defendant received this information elsewhere. Thus, a reasonable trier of fact could infer that defendant possessed this knowledge because of his identity as the killer. See *Bowman*, *supra* at 151 (stating that knowledge of the details of a crime may serve as incriminating evidence). Defendant also voluntarily informed the same detective that he threatened to kill the victim. See *Schollaert*, *supra* at 170.

When defendant's subsequent girlfriend confronted him about his identity as the killer, he threatened to "do" to her what he did to the victim. Likewise, defendant's statements to his cellmate were incriminating and inferred that he committed the murder.

In summary, the sequence of events on the morning of the murder, and defendant's presence at the scene of the crime, demonstrates that he not only had the opportunity to kill the victim, but that he did so. Evidence that he attempted to dispose of a gun the day of the victim's funeral, possessed special knowledge of the details of the crime, and made more than one

incriminating statement, supports his identity as the killer. Finally, the victim's manner of death, and the fact that defendant was angry with the victim, believed she was having an affair, and threatened to kill her, support the conclusion that defendant committed the murder with premeditation and deliberation and had a motive for doing so. Therefore, we find, that the evidence, taken together, is sufficient for a rational trier of fact to find defendant guilty of premeditated first-degree murder.

Defendant additionally argues that, because there is insufficient evidence to establish his identity as the killer, there is in turn, insufficient evidence to find him guilty of armed robbery and felony-firearm possession. To establish armed robbery under MCL 750.529, plaintiff must show that the defendant committed an assault and feloniously took property from the victim's presence or person, while armed with a dangerous weapon. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). To establish a felony-firearm conviction under MCL 750.227b, plaintiff must show that, during the commission of a felony, the defendant carried or possessed a firearm. *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003).

Several items and over \$2000 in cash were secured in the store the evening before the murder and were reported missing after the discovery of the victim's body. Considering that no one was inside the store before the victim deactivated the alarm on the morning of the murder, and that defendant bragged about his ability to hide a gun in the store and was familiar with the store's safes and security procedures, it is reasonable to infer that defendant shot the victim and also feloniously took the missing items and money from her presence while carrying a firearm. See *Carines*, *supra* at 758. In other words, we find that the facts establishing defendant's identity as the killer, coupled with defendant's familiarity with the store's security and money handling procedures, is sufficient evidence to find him guilty of armed robbery and felony-firearm possession.

In sum, based on the circumstantial evidence presented at trial, and reasonable inferences drawn from it, a rational juror could determine beyond a reasonable doubt that defendant killed the victim with premeditation and deliberation, feloniously took goods from her presence, and committed these acts while in possession of a firearm.

We affirm.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder
/s/ Deborah A. Servitto